

REMARKS

This Amendment is in response to the Office Action dated April 15, 2009 ("Office Action"). It is respectfully submitted that the application is in condition for allowance. Claims 10-19 and 29-33 are pending. No new matter has been added. Allowance and reconsideration of the application in view of Applicants' amendment and the ensuing remarks are respectfully requested.

In the Office Action, Examiner required a species election under 35 U.S.C. §§121 and 372 from the following group of conditions: prostate cancer, breast cancer, lung cancer, ovarian cancer, brain cancer, colon cancer or combinations thereof.

The Examiner cited Hedvat *et al.* (CANCER CELL (June 2004), 5:565-574) as teaching the treatment of prostate cancer with R-etolodac and 2C4. The Examiner alleged that the technical feature that appears to link the inventive concepts of different species of the present invention is not special in light of Hedvat *et al.* because it allegedly lacks a contribution over the prior art. Additionally, the Examiner noted that the species of the elected invention are independent and distinct because each different type of cancer is an etiologically and pathologically distinct disease.

Applicants hereby elect prostate cancer as the species for the condition. This election is readable upon claims 10-19 and 29-33. Applicants reserve the right to pursue the claims drawn to non-elected embodiments of the present invention in one or more divisional applications.

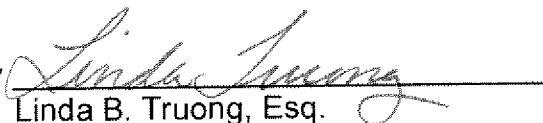
The foregoing election notwithstanding, Applicants respectfully traverse the restriction requirement and submit that it is improper. Examiner found that in light of Hedvat *et al.*, the subject application allegedly lacks a contribution over the prior art.

Applicants submit that the priority date for this instant application is at the very least August 27, 2004, and *not* November 8, 2006 as previously argued by the Examiner. As Applicants stated in the previous response, the present application is a national phase filing under 35 U.S.C. §365 of PCT/US04/28071, which was filed on

August 27, 2004. There are no changes to the specification or the claims from the PCT application and thus, under §365(a), the present application must be afforded the August 27, 2004 filing date, at the very least. Additionally, some claims, as indicated in Applicants' previous response are entitled to the August 29, 2003 priority date. Hedvat *et al.*, which is the inventors' own publication, is published in June 2004, which is not more than 1 year prior to the priority dates of the present application. Thus, Hedvat *et al.* cannot be cited as prior art for purposes of determining whether the technical feature that links the different species of the invention is "special." Hedvat *et al.* also cannot be cited as prior art against the present application. Withdrawal of the restriction requirement for the alleged lack of a single general inventive concept is thus, respectfully requested.

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If for any reason Examiner finds the application other than in condition for allowance, Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 633-6800 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,
David B. Agus *et al.*
DAVIS WRIGHT TREMAINE LLP

By 
Linda B. Truong, Esq.
Registration No. 56,461

865 South Figueroa Street, Suite 2400
Los Angeles, CA 90017-2566
Phone: (213) 633-6800
Facsimile: (213) 633-6899